

REMARKS

This Response is submitted in reply to the final Office Action mailed on November 7, 2006. A petition for a one month extension of time is submitted herewith. The Director is authorized to charge \$450.00 for the petition for a two month extension of time and any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-427 on the account statement.

Claims 1-7 and 10-28 are pending in this application. Claims 8-9 were previously canceled without prejudice or disclaimer. In the Office Action, Claims 1-7 and 10-28 are rejected under 35 U.S.C. §103(a). Applicants respectfully submit that the rejections should be withdrawn for at least the reasons set forth below.

In the Office Action, Claims 1-7 and 10-28 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,024,996 to Ringe ("*Ringe*"). Applicants believe this rejection is improper and respectfully traverse it for at least the reasons set forth below.

Applicants submitted an Affidavit under 37 C.F.R. §1.132 ("*Affidavit*" attached hereto as Exhibit A) that demonstrates the deficiencies of the prior art with respect to the present claims. As supported by the *Affidavit*, *Ringe* fails to disclose or suggest every element of the present claims. For example, *Ringe* fails to disclose or suggest a food product comprising in percent by weight of dry matter, 0.5 to about 5% of a viscous soluble fiber, 2 to about 20% oat bran concentrate, and 10 to about 30% cereal bran as required, in part, by independent Claims 1, 18 and 23. *Ringe* also fails to disclose or suggest using 1 to about 4%, in percent by weight of dry matter, of a viscous soluble fiber, 4 to about 16% oat bran concentrate, and 10 to about 30% oat bran in the preparation of the food product as required, in part, by independent Claims 10 and 13. Further, *Ringe* fails to disclose or suggest feeding an individual a food product comprising by weight of dry matter, 0.5 to about 5% of a viscous soluble fiber, 2 to about 20% oat bran concentrate, and 10 to about 30% cereal bran as required, in part, by independent Claims 18 and 23. The Patent Office admits same. See, Office Action, page 2.

Applicants also respectfully submit that the skilled artisan would have no reasonable expectation of success using *Ringe* in arriving at the present claims. For example, and as supported by the *Affidavit*, Applicants have surprisingly found that when a food product containing certain viscous soluble fibers, cereal bran or oat bran, and oat bran concentrate in

specific proportions is mixed with water at 37 °C, body temperature, an unexpectedly high viscosity is obtained. In other words, when the food product containing the above-listed ingredients is ingested, it develops a high viscosity in the gastrointestinal tract without the need to add high amounts of a cold-soluble, high-viscosity fiber that gives undesirable organoleptic properties to the food product. This effect is demonstrated and discussed in the present specification, for example, in Example 2 and Figure 1. This enables food products that are palatable and efficacious in terms of generating a highly viscous mixture when ingested to be provided.

This evidence is contrary even to comments from the Patent Office. For example, at pages 4 and 5 of the Office Action, the Patent Office states that it would have been obvious to use a viscous soluble fiber with oat bran to increase the viscosity of a food product because oat bran is not a viscous ingredient and is not a naturally viscous hydrocolloid. However, this statement further illustrates the unexpected and surprising results obtained by addition of oat bran (a non-viscous ingredient) to a mixture of a viscous soluble fiber and oat bran concentrate to achieve a substantial increase in viscosity of a food product when treated with water at 37 °C. See, Specification, page 14, lines 1-23.

The health benefits of fiber in general and soluble fiber in particular are known. One specific benefit of the consumption of viscous soluble fiber is its ability to modulate post-prandial glycaemic peaks. This benefit is linked to the ability of the viscous soluble fiber to "lock up" glucose released by digestion of carbohydrates so as to reduce the rate of absorption of the glucose from the intestinal tract into the blood. For healthy individuals, this means that consumption of carbohydrates together with viscous soluble fiber results in a prolonged feeling of satiety. For individuals suffering from Type II diabetes, it offers a chance to control hyperglycaemic episodes.

As supported by the *Affidavit* and discussed in the present specification, it is difficult to produce food products with a high content of soluble fiber at all (i.e. no end product possible) and with the required degree of palatability. The claimed combination of ingredients in accordance with embodiments of the present invention, for example, produces a synergistic increase in viscosity of the ingested food product for delaying glucose absorption or appearance in blood and/or to maintain raised glucose levels while avoiding high glucose peaks. An advantage of this is that a high viscosity is achieved after ingestion of the food product without

adding high amounts of cold soluble, high-viscosity fiber, which is often difficult to isolate and gives undesirable organoleptic properties to the food product.

In contrast, and as supported by the *Affidavit*, *Ringe* fails to teach or even recognize the physiological significances of the viscosity of the ingested product. The Patent Office argues that it would have been within the skill of the ordinary worker to use particular amounts of the claimed ingredients (e.g., oat bran or oat bran concentrate) for their known functions. See, Office Action, pages 2-4. However, as supported by the *Affidavit*, the increased viscosity resulting from the addition of oat bran to a mixture of a highly-viscous soluble fiber and oat bran concentrate at body temperature was both unexpected and surprising.

Applicants respectfully submit that the skilled artisan wishing to reduce the soluble fiber content of a food product to improve its palatability while at the same time still obtaining the beneficial physiological effects of soluble fiber linked to its viscosity generating properties would find no motivation or guidance to do so in *Ringe*. For at least the reasons discussed above, *Ringe* does not teach, suggest, or even disclose all of the elements of the present claims, and thus, fails to render the claimed subject matter obvious.

Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claims 1-7 and 10-28 be reconsidered and the rejection be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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Dated: April 3, 2007